Office Supreme Court, U.S.
FILED
FEB 20 1965
JOHN F. DAVIS, CLERK

No. 564

IN THE

Supreme Court of the United States

CARMEN TISONE,

Appellant,

vs.

THE STATE OF OHIO,

Appellee.

PETITION FOR REHEARING

THEODORE R. SAKER,
50 E. Broad St., Columbus, Ohio,
AVETIS G. DARVANAN,
802 Mahoning Bk. Bldg., Youngstown, Ohio,
Attorneys for Appellant.

CLYDE OSBORNE,
Prosecuting Attorney,
Mahoning County Court House,
Youngstown, Ohio,
Attorney for Appellee.

MIDWEST LAW PRINTERS AND PUBLISHERS, INC., Columbus 15, Ohio

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 564

CARMEN TISONE,

Appellant,

vs.

THE STATE OF OHIO,

Appellee.

PETITION FOR REHEARING

Now comes the appellant, pursuant to Rule 58 of the Revised Rules of the Supreme Court of the United States and petitions for a rehearing of his case.

THEODORE R. SAKER,
Attorney for Appellant.

IN SUPPORT OF THE PETITION

It is the position of the appellant that although he may not have correctly presented the grounds for his appeal in the previous pleadings addressed to this Court, his appeal is meritorious and ought to be considered further. It is appellant's belief that he has met all of the requirements necessary to vest in the Supreme Court of the United States the jurisdiction to review the decision of the Supreme Court of the State of Ohio.

The judgment rendered by the Supreme Court of the State of Ohio on September 23, 1964, denying rehearing

in the case of *Carmen Tisone* vs. *State of Ohio* was a final judgment of that court. The Supreme Court of the State of Ohio is the highest court in Ohio in which the cause of the appellant could be heard.

The question of the constitutional validity of the search of which the appellant complains was raised before trial in his trial in the Court of Common Pleas of Mahoning County, Ohio. (See "Jurisdictional Statement", page 3.) This question was preserved in the Court of Appeals and was considered by that court in its written opinion. (See "Jurisdictional Statement," page 11.) This question was again raised by the appellant before the Supreme Court of the State of Ohio and was considered by that court when it stated that: "On consideration thereof, such appeal is dismissed for the reason that no substantial constitutional question exists herein." (See "Jurisdictional Statement," page 14.)

Directly in point with the refusal of the Ohio Supreme Court to reverse the decision of the Court of Appeals, the appellant would respectfully point out that the Ohio Supreme Court has consistently differed with what the appellant believes to be the sense and essence of the decisions of the Supreme Court of the United States regarding the tests of the legality of searches and seizures. By this statement, the appellant does not wish to impute that the Ohio court has avoided or opposed the rulings of the Supreme Court of the United States, as those rulings declare the law of the land. Most certainly, the Ohio court has not. Rather, that court has limited the import of the landmark cases of *Mapp v. Ohio*, 367 U.S. 643 and *Ker v. California*, 374 U.S. 23, to the specific facts of those cases. The Ohio court has refused to elicit from the decisions of the Supreme Court of the United States the essential elements of

an illegal search and seizure, and, in the opinion of the appellant, has applied the rules expressed so woodenly and mechanically that injustice results to those who embody the essence, but not the letter of the ruling of the Supreme Court of the United States. On some occasions, outside the walls of the chambers in Columbus, Ohio, some of the members of the Ohio court have expressed their personal dissatisfaction with the rulings of the Supreme Court of the United States as those decisions must apply to other situations where the claim of an illegal search has been made. In this respect, the attention of the Court is respectfully directed to an article appearing in 50 *American Bar Association Journal*, pp. 815-818, entitled, "Protecting the Public from *Mapp v. Ohio* without Amending the Constitution." written by the Honorable Kingsley A. Taft, Chief Justice of the Supreme Court of the State of Ohio.

Admittedly, the case of the appellant does not fall clearly within the aggravated facts of *Ker* or *Mapp*, so the appellant is requesting the permission of this Court to demonstrate, through brief and argument, that his Constitutional rights have been violated as flagrantly as were those of Miss Mapp and Mr. Ker.

The appellant has shown that the Court of Appeals has either misread or failed to read the decisions of the Supreme Court of the United States; that the police officials and magisterial judges failed to follow the procedures prescribed by the laws of Ohio and, in so doing, violated the appellant's federally-guaranteed rights; and that continuing problems surround the question of Constitutional searches and seizures which cannot be solved by a reading of the law by those judges who do not recognize the inherent guarantee, but only the particular application of that guarantee directly in point with cases already decided.

The appellant has suffered a great injustice at the hands of the final Ohio judges of his cause. He now makes this last appeal that his application may be reheard.

THEODORE R. SAKER,
50 East Broad Street,
Columbus, Ohio,
/S/ AVETIS G. DARVANAN,
802 Mahoning Bank Building,
Youngstown, Ohio,
Counsel for Appellant.

AFFIDAVIT

Now comes Theodore R. Saker, Attorney for the herein Appellant, and says that the foregoing Petition for Rehearing has been submitted in good faith and not for delay.

Further the affiant sayeth not.

THEODORE R. SAKER.

STATE OF OHIO, COUNTY OF FRANKLIN, ss:

Sworn to before me and signed in my presence this 3rd day of February, 1965.

JEAN E. HOFFMAN,
Notary Public.

MICRO CARD 22
TRADE MARK ®
MATTHEW BENDER & COMPANY
PC 68 2
59-
microcard